

AN ACT

RELATING TO PENSIONS; AMENDING MAGISTRATE RETIREMENT ACT PROVISIONS APPLICABLE TO CERTAIN MEMBERS BY CHANGING THE AGE AND SERVICE REQUIREMENTS FOR NORMAL RETIREMENT, DECREASING THE PENSION MULTIPLIER FOR SERVICE CREDIT EARNED AFTER JUNE 30, 2014 AND INCREASING THE NUMBER OF YEARS USED TO CALCULATE THE FINAL AVERAGE SALARY; PROVIDING A TEMPORARY SUSPENSION OF AND DECREASE AND DELAY OF THE COST-OF-LIVING ADJUSTMENT; INCREASING THE MAXIMUM PENSION BENEFIT; INCREASING CONTRIBUTION RATES; REQUIRING MEMBERSHIP; CHANGING THE PENSION FORM OF PAYMENT AND SURVIVOR BENEFICIARY PROVISIONS FOR NEW MAGISTRATES AND MAGISTRATES WHOSE TERMS OF OFFICE BEGIN ON OR AFTER JULY 1, 2014; PROVIDING FOR THE SUSPENSION OF THE COST-OF-LIVING ADJUSTMENT FOR RETURN-TO-WORK JUDGES, JUSTICES AND MAGISTRATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 10-11-8 NMSA 1978 (being Laws 1987, Chapter 253, Section 8, as amended) is amended to read:

"10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT-- BENEFITS CONTINUED--CONTRIBUTIONS.--

A. A member may retire upon fulfilling the following requirements prior to the selected date of retirement:

(1) a written application for normal

retirement, in the form prescribed by the association, is filed with the association;

(2) employment is terminated with all employers covered by any state system or the educational retirement system;

(3) the member selects an effective date of retirement that is the first day of a calendar month; and

(4) the member meets the age and service credit requirement for normal retirement specified in the coverage plan applicable to the member.

B. The amount of normal retirement pension is determined in accordance with the coverage plan applicable to the member.

C. Except as provided in Subsection E of this section, on or after July 1, 2010, a retired member may be subsequently employed by an affiliated public employer only pursuant to the following provisions:

(1) the retired member has not been employed as an employee of an affiliated public employer or retained as an independent contractor by the affiliated public employer from which the retired member retired for at least twelve consecutive months from the date of retirement to the commencement of subsequent employment or reemployment with an affiliated public employer;

(2) the retired member's pension shall be

suspended upon commencement of the subsequent employment;

(3) except as provided in Subsection G of this section, the retired member shall not become a member and shall not accrue service credit, and the retired member and that person's subsequent affiliated public employer shall not make contributions under any coverage plan pursuant to the Public Employees Retirement Act; and

(4) upon termination of the subsequent employment, the retired member's pension shall resume in accordance with the provisions of Subsection A of this section.

D. Notwithstanding the provisions of Subsection B of Section 10-11-118 NMSA 1978, on and after July 1, 2013, if a retired member becomes employed with an employer pursuant to the Educational Retirement Act, and effective July 1, 2014, if a retired member who, subsequent to retirement, is employed and covered pursuant to the Judicial Retirement Act:

(1) the retired member's cost-of-living pension adjustment shall be suspended upon commencement of the employment; and

(2) upon termination of the employment, the retired member's suspended cost-of-living pension adjustment shall be reinstated as provided under Subsection B of Section 10-11-118 NMSA 1978.

E. The provisions of Subsections C, H and I of

this section do not apply to:

(1) a retired member employed by the legislature for legislative session work;

(2) a retired member employed temporarily as a precinct board member for a municipal election or an election covered by the Election Code; or

(3) a retired member who is elected to serve a term as an elected official in an office covered pursuant to the Public Employees Retirement Act; provided that:

(a) the retired member files an irrevocable exemption from membership with the association within thirty days of taking office; and

(b) the irrevocable exemption shall be for the elected official's term of office.

F. A retired member who returns to employment during retirement pursuant to Subsection E of this section is entitled to receive retirement benefits but is not entitled to accrue service credit or to acquire or purchase service credit in the future for the period of the retired member's subsequent employment with an affiliated public employer.

G. At any time during a retired member's subsequent employment pursuant to Subsection C of this section, the retired member may elect to become a member and the following conditions shall apply:

(1) the previously retired member and the

subsequent affiliated public employer shall make the required employee and employer contributions, and the previously retired member shall accrue service credit for the period of subsequent employment; and

(2) when the previously retired member terminates the subsequent employment with an affiliated public employer, the previously retired member shall retire according to the provisions of the Public Employees Retirement Act, subject to the following conditions:

(a) payment of the pension shall resume in accordance with the provisions of Subsection A of this section;

(b) unless the previously retired member accrued at least three years of service credit on account of the subsequent employment, the recalculation of pension shall: 1) employ the form of payment selected by the previously retired member at the time of the first retirement; and 2) use the provisions of the coverage plan applicable to the member on the date of the first retirement; and

(c) the recalculated pension shall not be less than the amount of the suspended pension.

H. A retired member who returned to work with an affiliated public employer prior to July 1, 2010 shall be subject to the provisions of this section in effect on the date the retired member returned to work; provided that:

(1) on and after July 1, 2010, the retired member shall pay the employee contribution in an amount specified in the Public Employees Retirement Act for the position in which the retired member is subsequently employed;

(2) notwithstanding the provisions of Subsection B of Section 10-11-118 NMSA 1978, on and after July 1, 2013, the retired member's cost-of-living pension adjustment shall be suspended; and

(3) upon termination of the subsequent employment with the affiliated public employer, the retired member's cost-of-living pension adjustment shall be reinstated as provided in Subsection B of Section 10-11-118 NMSA 1978.

I. Effective July 1, 2014, if a retired member who, subsequent to retirement, is employed and covered pursuant to the provisions of the Magistrate Retirement Act, during the period of subsequent employment:

(1) the member shall be entitled to receive retirement benefits;

(2) the retired member's cost-of-living pension adjustment shall be suspended upon commencement of the employment; and

(3) upon termination of the employment, the retired member's suspended cost-of-living pension adjustment shall be reinstated as provided under Subsection B of Section 10-11-118 NMSA 1978.

J. The pension of a member who has earned service credit under more than one coverage plan shall be determined as follows:

(1) the pension of a member who has three or more years of service credit earned on or before June 30, 2013 under each of two or more coverage plans shall be determined in accordance with the coverage plan that produces the highest pension;

(2) the pension of a member who has service credit earned on or before June 30, 2013 under two or more coverage plans but who has three or more years of service credit under only one of those coverage plans shall be determined in accordance with the coverage plan in which the member has three or more years of service credit. If the service credit is acquired under two different coverage plans applied to the same affiliated public employer as a consequence of an election by the members, adoption by the affiliated public employer or a change in the law that results in the application of a coverage plan with a greater pension, the greater pension shall be paid a member retiring from the affiliated public employer under which the change in coverage plan took place regardless of the amount of service credit under the coverage plan producing the greater pension; provided that the member has three or more years of continuous employment with that affiliated public employer immediately

preceding or immediately preceding and immediately following the date the coverage plan changed;

(3) the pension of a member who has service credit earned on or before June 30, 2013 under each of two or more coverage plans and who has service credit earned under any coverage plan on or after July 1, 2013 shall be equal to the sum of:

(a) the pension attributable to the service credit earned on or before June 30, 2013 determined pursuant to Paragraph (1) or (2) of this subsection; and

(b) the pension attributable to the service credit earned under each coverage plan on or after July 1, 2013;

(4) the pension of a member who has service credit earned only on and after July 1, 2013 shall be equal to the sum of the pension attributable to the service credit the member has accrued under each coverage plan; and

(5) the provisions of each coverage plan for the purpose of this subsection shall be those in effect at the time the member ceased to be covered by the coverage plan.

"Service credit", for the purposes of this subsection, shall be only personal service rendered an affiliated public employer and credited to the member under the provisions of Subsection A of Section 10-11-4 NMSA 1978. Service credited under any other provision of the Public Employees Retirement

Act shall not be used to satisfy the three-year service credit requirement of this subsection."

SECTION 2. Section 10-12C-2 NMSA 1978 (being Laws 1992, Chapter 118, Section 2, as amended) is amended to read:

"10-12C-2. DEFINITIONS.--As used in the Magistrate Retirement Act:

A. "association" means the public employees retirement association provided for in the Public Employees Retirement Act;

B. "board" means the retirement board provided for in the Public Employees Retirement Act;

C. "dependent child" means a natural or adopted child who is physically or mentally incapable of financial self-support, regardless of age;

D. "educational retirement system" means the retirement system provided for in the Educational Retirement Act;

E. "effective date of retirement" means the first day of the month following the month in which the member met all requirements for retirement;

F. "final average salary" means the amount that is one-sixtieth of the greatest aggregate amount of salary paid a member for sixty consecutive, but not necessarily continuous, months of service credit;

G. "former member" means a person no longer in

office who was previously covered pursuant to the provisions of Sections 10-12A-1 through 10-12A-13 NMSA 1978, but who has not retired pursuant to the provisions of the Magistrate Retirement Act and who has received a refund of member contributions pursuant to the provisions of Sections 10-12C-1 through 10-12C-18 NMSA 1978;

H. "fund" means the magistrate retirement fund;

I. "magistrate" means a magistrate judge;

J. "member" means any magistrate who is in office and covered pursuant to the provisions of the Magistrate Retirement Act, or any person no longer in office who was previously a magistrate covered pursuant to the provisions of the Magistrate Retirement Act, who has not retired and who has not received a refund of member contributions from the fund;

K. "member contributions" means the amounts deducted from the salary of a member and credited to the member's individual account, together with interest, if any, credited thereto;

L. "minor child" means a natural or adopted child who has not reached his eighteenth birthday and who has not been emancipated by marriage or otherwise;

M. "pension" means a series of monthly payments to a retired member or survivor beneficiary pursuant to the provisions of the Magistrate Retirement Act;

N. "refund beneficiary" means a person designated

by the member, in writing in the form prescribed by the association, as the person who would be refunded the member's accumulated member contributions payable if the member dies and no survivor pension is payable, or as the person who would receive the difference between pension paid and accumulated member contributions if the retired member dies before receiving in pension payments the amount of the accumulated member contributions;

O. "retire" means to:

(1) terminate employment with all employers covered by any state system or the educational retirement system; and

(2) receive a pension from one state system or the educational retirement system;

P. "retired member" means a person who has met all requirements for retirement and who is receiving a pension from the fund;

Q. "salary" means the base salary or wages paid a member, including longevity pay, for personal services rendered; provided that salary does not include overtime pay; allowances for housing, clothing, equipment or travel; payments for unused sick leave, unless the unused sick leave payment is made through continuation of the member on the regular payroll for the period represented by that payment; and any other form of remuneration not specifically designated

by law as included in salary pursuant to the provisions of the Magistrate Retirement Act;

R. "state system" means the retirement programs provided pursuant to the provisions of the Public Employees Retirement Act, the Magistrate Retirement Act and the Judicial Retirement Act;

S. "surviving spouse" means the spouse to whom the member was married at the time of the member's death;

T. "survivor beneficiary" means a person who receives a pension or who has been designated to be paid a pension as a result of the death of a member or retired member; and

U. "years of service" means a period of time beginning on the date a person commences to hold office as a magistrate because of appointment or election and ending on the date a person ceases to hold office as a magistrate because of expiration of the magistrate's term, voluntary resignation, death or disability and shall include any fractions of years of service."

SECTION 3. Section 10-12C-4 NMSA 1978 (being Laws 1992, Chapter 118, Section 4) is amended to read:

"10-12C-4. MEMBERSHIP.--Every magistrate while in office shall become a member and shall be subject to the provisions of the Magistrate Retirement Act; provided, however, that a magistrate who, prior to July 1, 2014, applied

for and received an exemption from membership shall not become a member until such exemption ends. A magistrate who is retired under any state system or the educational retirement system shall:

A. pay the applicable member contributions and the state, through the administrative office of the courts, shall pay the applicable employer contributions as provided pursuant to the Magistrate Retirement Act; and

B. not accrue service credit and shall not be eligible to purchase service credit nor to retire pursuant to the Magistrate Retirement Act."

SECTION 4. Section 10-12C-5 NMSA 1978 (being Laws 1992, Chapter 118, Section 5, as amended) is amended to read:

"10-12C-5. SERVICE CREDIT--REINSTATEMENT OF FORFEITED SERVICE--PRIOR SERVICE--MILITARY SERVICE.--

A. Personal service rendered by a member shall be credited to the member's service credit account in accordance with board rules and regulations. Service shall be credited to the nearest month. In no case shall any member be credited with a year of service for less than twelve months of service in any calendar year or more than a month of service for all service in any calendar month or more than a year of service for all service in any calendar year.

B. Service credit shall be forfeited if a member leaves office and withdraws the member's accumulated member

contributions. A member or former member who is a member of another state system or the educational retirement system who has forfeited service credit by withdrawal of member contributions may reinstate the forfeited service credit by repaying the amount withdrawn plus compound interest from the date of withdrawal to the date of repayment at a rate set by the board. Withdrawn member contributions may be repaid in increments of one year in accordance with procedures established by the board. Full payment of each one-year increment shall be made in a single lump-sum amount in accordance with procedures established by the board.

C. Service credit that a member would have earned if the member had not elected to be excluded from membership may be purchased if the member pays the purchase cost determined pursuant to the provisions of Subsection F of this section.

D. A member who during a term of office enters a uniformed service of the United States shall be given service credit for periods of service in the uniformed services subject to the following conditions:

(1) the member returns to office within ninety days following termination of the period of intervening service in the uniformed services or the affiliated employer certifies in writing to the association that the member is entitled to reemployment rights under the federal Uniformed

Services Employment and Reemployment Rights Act of 1994;

(2) the member retains membership in the association during the period of service in the uniformed services;

(3) free service credit shall not be given for periods of intervening service in the uniformed services following voluntary reenlistment. Service credit for such periods shall only be given after the member pays the association the sum of the contributions that the person would have been required to contribute had the person remained continuously employed throughout the period of intervening service following voluntary reenlistment, which payment shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the person's intervening service in the uniformed services following voluntary reenlistment, not to exceed five years;

(4) service credit shall not be given for periods of intervening service in the uniformed services that are used to obtain or increase a benefit from another state system or the retirement program provided under the Educational Retirement Act; and

(5) the member must not have received a discharge or separation from uniformed service under other than honorable conditions.

Notwithstanding any provision of this plan to the

contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code of 1986, as amended.

E. A member who entered a uniformed service of the United States may purchase service credit for periods of active duty in the uniformed services, subject to the following conditions:

(1) the member pays the purchase cost determined pursuant to the provisions of Subsection F of this section;

(2) the member has the applicable minimum number of years of service credit accrued according to the provisions of the Magistrate Retirement Act;

(3) the aggregate amount of service credit purchased pursuant to the provisions of this subsection does not exceed five years, reduced by any period of service credit acquired for military service under any other provision of the Magistrate Retirement Act;

(4) service credit may not be purchased for periods of service in the uniformed services that are used to obtain or increase a benefit from another retirement program; and

(5) the member must not have received a discharge or separation from uniformed service under other

than honorable conditions.

F. The purchase cost for each year of service credit purchased pursuant to the provisions of this section shall be the increase in the actuarial present value of the pension of the member under the Magistrate Retirement Act as a consequence of the purchase, as determined by the association. Full payment shall be made in a single lump-sum amount in accordance with procedures established by the board. Except as provided in Subsection G of this section, seventy-five percent of the purchase cost shall be considered to be employer contributions and shall not be refunded to the member in the event of cessation of membership.

G. A member shall be refunded, after retirement and upon written request filed with the association, the portion of the purchase cost of service credit purchased pursuant to the provisions of this section that the association determines to have been unnecessary to provide the member with the maximum pension applicable to the member. The association shall not pay interest on the portion of the purchase cost refunded to the member.

H. At any time prior to retirement, a member may purchase service credit in monthly increments, subject to the following conditions:

(1) the member has the applicable minimum number of years of service credit acquired as a result of

personal service rendered under the Magistrate Retirement Act;

(2) the aggregate amount of service credit purchased pursuant to this subsection does not exceed one year;

(3) the member pays full actuarial present value of the amount of the increase in the member's pension as a consequence of the purchase, as determined by the association;

(4) the member pays the full cost of the purchase within sixty days of the date the member is informed of the amount of the payment; and

(5) the purchase of service credit under this subsection cannot be used to exceed the pension maximum."

SECTION 5. Section 10-12C-8 NMSA 1978 (being Laws 1992, Chapter 118, Section 8) is amended to read:

"10-12C-8. AGE AND SERVICE CREDIT REQUIREMENTS FOR NORMAL RETIREMENT.--

A. For a magistrate who was a member on June 30, 2014, the age and service credit requirements for retirement provided for in the Magistrate Retirement Act are:

(1) age sixty-five years or older and five or more years of service credit;

(2) age sixty years or older and fifteen or more years of service credit; or

(3) any age and twenty-four or more years of

service credit.

B. For a magistrate who initially became a member on or after July 1, 2014, the age and service requirements for normal retirement provided for in the Magistrate Retirement Act are:

(1) age sixty-five years or older and eight or more years of service credit;

(2) age sixty years or older and fifteen or more years of service credit; or

(3) any age and twenty-four or more years of service credit.

C. Except for a member who is retired under any state system or the educational retirement system, if a member leaves office for any reason, other than removal pursuant to Article 6, Section 32 of the constitution of New Mexico before meeting the age and service credit requirements for retirement pursuant to the provisions of this section and if that member leaves the member contributions on deposit in the fund, that member may apply for retirement when that member meets the age and service credit requirements for retirement pursuant to the provisions of the Magistrate Retirement Act or provisions of the Public Employees Retirement Reciprocity Act.

D. No member shall be eligible to receive a pension pursuant to the provisions of the Magistrate Retirement Act while still in office."

SECTION 6. Section 10-12C-9 NMSA 1978 (being Laws 1992, Chapter 118, Section 9) is amended to read:

"10-12C-9. AMOUNT OF PENSION.--

A. For a magistrate who was a member on June 30, 2014, the monthly pension is an amount equal to the sum of:

(1) for service credit earned on or before June 30, 2014, the amount is equal to one-twelfth of:

seventy-five percent

of salary received

(number of years of

during last year in

X .05 X

service, not exceeding

office prior to

fifteen years,

retirement

plus five years); and

(2) for service credit earned on and after July 1, 2014, an amount equal to one-sixtieth of the greatest aggregate amount of salary received for sixty consecutive, but not necessarily continuous, months in office multiplied by the product of three and one-half percent times the sum of the number of years of service.

B. For a magistrate who initially became a member on or after July 1, 2014, the amount of monthly pension is equal to one-sixtieth of the greatest aggregate amount of salary received for sixty consecutive, but not necessarily continuous, months in office multiplied by the product of three percent times the sum of the number of years of service.

C. The amount of monthly pension under form of

payment A for a pension calculated pursuant to Subsection B of this section shall not exceed eighty-five percent of one-sixtieth of the greatest aggregate amount of salary received for sixty consecutive, but not necessarily continuous, months prior to the member leaving office.

D. The amount of monthly pension payable for a pension calculated pursuant to Subsection A of this section shall not exceed eighty-five percent of one-sixtieth of the greatest aggregate amount of salary received for sixty consecutive, but not necessarily continuous, months prior to the member leaving office. A pension benefit determined pursuant to this subsection shall not be less than the benefit earned as of June 30, 2014."

SECTION 7. Section 10-12C-10 NMSA 1978 (being Laws 1992, Chapter 118, Section 10, as amended) is amended to read:

"10-12C-10. MEMBER CONTRIBUTIONS--TAX TREATMENT.--

A. On and after July 1, 2014, members, while in office, shall contribute ten and one-half percent of salary to the member contribution fund.

B. Upon implementation, the state, acting as employer of members covered pursuant to the provisions of the Magistrate Retirement Act, shall, solely for the purpose of compliance with Section 414(h) of the Internal Revenue Code of 1986, pick up, for the purposes specified in that section, member contributions required by this section for all annual

salary earned by the member. Member contributions picked up pursuant to the provisions of this section shall be treated as employer contributions for purposes of determining income tax obligations under the Internal Revenue Code of 1986; however, such picked-up member contributions shall be included in the determination of the member's gross annual salary for all other purposes under federal and state laws. Member contributions picked up pursuant to the provisions of this section shall continue to be designated member contributions for all purposes of the Magistrate Retirement Act and shall be considered as part of the member's annual salary for purposes of determining the amount of the member's contribution. The provisions of this section are mandatory, and the member shall have no option concerning the pick up or concerning the receipt of the contributed amounts directly instead of having the amounts paid by the employer to the retirement system. Implementation occurs upon authorization by the board. In no event may implementation occur other than at the beginning of a pay period applicable to the member."

SECTION 8. Section 10-12C-11 NMSA 1978 (being Laws 1992, Chapter 118, Section 11, as amended) is amended to read:

"10-12C-11. EMPLOYER CONTRIBUTIONS.--

A. The state, through the administrative office of the courts, shall contribute to the fund fifteen percent of salary for each member in office, except that, from July 1,

2014 through June 30, 2015, the state contribution rate shall be eleven percent of salary for each member in office.

B. Twenty-five dollars (\$25.00) from each civil case docket fee paid in magistrate court and ten dollars (\$10.00) from each civil jury fee paid in magistrate court shall be paid by the court clerk to the employer's accumulation fund."

SECTION 9. Section 10-12C-12 NMSA 1978 (being Laws 1992, Chapter 118, Section 12) is amended to read:

"10-12C-12. DISABILITY RETIREMENT PENSION.--

A. A magistrate with the applicable minimum number of years of service credit accrued pursuant to the provisions of the Magistrate Retirement Act who becomes unable to carry out the duties of that office due to physical or mental disability shall, upon determination of the disability and relinquishment of office, receive a pension from the fund so long as the disability continues. Determination of disability shall be made by the board in accordance with the provisions of the Public Employees Retirement Act and rules promulgated pursuant to that act.

B. The amount of the pension shall be calculated using the formula for normal retirement set out in Section 10-12C-9 NMSA 1978.

C. The applicable service credit requirement shall be waived if the board finds the disability to have been the

natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty as a magistrate, and the amount of pension shall be computed as if the member had the applicable minimum number of years of service credit as a magistrate."

SECTION 10. Section 10-12C-13 NMSA 1978 (being Laws 1992, Chapter 118, Section 13) is amended to read:

"10-12C-13. SURVIVOR'S PENSION.--For a member whose initial term in office began prior to July 1, 2014:

A. unless the member has designated a survivor beneficiary in accordance with Subsection B of this section, a survivor pension shall be paid for life to a member's or retired member's surviving spouse;

B. the member may designate, in writing in a form prescribed by the association, a survivor beneficiary to receive the survivor's pension described in this section. If the member is married, a designation of survivor beneficiary other than the member's spouse may only be made with the written consent of the member's spouse. Marriage subsequent to a designation of survivor beneficiary shall automatically revoke the designation of survivor beneficiary. A designation of survivor beneficiary made pursuant to a court order issued under Section 10-12C-7 NMSA 1978 shall not require the consent of the member's spouse, if any, and shall not be revoked by the subsequent remarriage of the member. A designation of

survivor beneficiary may be revoked by the member at any time prior to the member's retirement. If the member is married, a revocation of designation of survivor beneficiary may only be made with the written consent of the member's spouse;

C. if there is no surviving spouse and no designated survivor beneficiary or if the surviving spouse dies while there are still minor and dependent children of the member, the survivor's pension shall be paid to all minor and dependent children, if any, of the member, in equal shares, so long as each child remains a minor or dependent child. As each child ceases to be a minor or dependent child, the number of shares shall be reduced and the amount payable to each remaining child increased proportionately so that the total survivor's pension remains unchanged as long as there is any such child;

D. the survivor's pension is equal to seventy-five percent of the member's pension;

E. survivor beneficiaries shall be eligible for other benefits provided pursuant to the provisions of the Magistrate Retirement Act, including cost-of-living adjustments and continuation of group insurance benefits; and

F. if a member dies while receiving a disability retirement pension, the survivor beneficiary shall receive the survivor pension provided pursuant to the provisions of the Magistrate Retirement Act."

SECTION 11. A new section of the Magistrate Retirement Act, Section 10-12C-13.1 NMSA 1978, is enacted to read:

"10-12C-13.1. ELECTION FORM OF PENSION.--For a member whose initial term in office begins on or after July 1, 2014, except as otherwise provided in Section 10-12C-7 NMSA 1978:

A. the member may elect to have pension payments made under any one of the forms of payment provided in Section 10-12C-13.2 NMSA 1978. The election of form of payment and naming of survivor pension beneficiary shall be made on a form furnished by and filed with the association prior to the date the first pension payment is made. An election of form of payment may not be changed after the date the first pension payment is made. If the member is married, the association shall require the consent of the member's spouse to the election of the form of payment and any designation of survivor pension beneficiary before the election or designation is effective. Except as provided in Subsection C, D or E of this section, a named survivor pension beneficiary may not be changed after the date the first pension payment is made if form of payment B or C is elected. Except as otherwise provided in Section 10-12C-7 NMSA 1978, payment shall be made:

(1) under form of payment A if the member is not married at the time of retirement and if there is not a timely election of another form of payment; or

(2) under form of payment C with the member's spouse as survivor pension beneficiary if the member is married at the time of retirement and there is not a timely election of another form of payment;

B. the amount of pension under forms of payment B, C and D shall have the same actuarial present value, computed as of the effective date of the pension, as the amount of pension under form of payment A;

C. if the member is a retired member who is being paid a pension under form of payment B or C with the member's spouse as the designated survivor pension beneficiary, the retired member may, upon becoming divorced from the named spouse and subject to an order of a court as provided for in Section 10-12C-7 NMSA 1978, elect to have future payments made under form of payment A;

D. if the member is retired and was previously being paid a pension under form of payment B or C but, because of the death of the designated survivor pension beneficiary, is currently receiving a pension under form of payment A, the retired member may exercise a one-time irrevocable option to designate another individual as the survivor pension beneficiary and may select either form of payment B or form of payment C; provided that:

(1) the amount of the pension under the form of payment selected shall be recalculated and have the same

actuarial present value, computed on the effective date of the designation, as the amount of pension under form of payment A;

(2) the designation and the amount of the pension shall be subject to a court order as provided for in Section 10-12C-7 NMSA 1978; and

(3) the retired member shall pay one hundred dollars (\$100) to the board to defray the cost of determining the new pension amount; and

E. if the member is a retired member who is being paid a pension under form of payment B or C with a living designated survivor pension beneficiary other than the retired member's spouse or former spouse, the retired member may exercise a one-time irrevocable option to deselect the designated beneficiary and elect to:

(1) designate another survivor pension beneficiary; provided that:

(a) the retired member shall not have an option to change from the current form of payment;

(b) the amount of the pension under the form of payment shall be recalculated and shall have the same actuarial present value, computed as of the effective date of the designation, as the amount of pension under form of payment A; and

(c) the retired member shall pay one hundred dollars (\$100) to the board to defray the cost of

determining the new pension amount; or

(2) have future payments made under form of payment A."

SECTION 12. A new section of the Magistrate Retirement Act, Section 10-12C-13.2 NMSA 1978, is enacted to read:

"10-12C-13.2. FORM OF PENSION PAYMENT.--

A. Straight life pension is form of payment A. The retired member is paid the pension for life under form of payment A. All payments stop upon the death of the retired member, except as provided by Subsection E of this section. The amount of pension is determined in accordance with the coverage plan applicable to the retired member.

B. Life payments with full continuation to one survivor beneficiary is form of payment B. The retired member is paid a reduced pension for life under form of payment B. When the retired member dies, the designated survivor beneficiary is paid the full amount of the reduced pension until death. If the designated survivor beneficiary predeceases the retired member, the amount of pension shall be changed to the amount that would have been payable had the retired member elected form of payment A.

C. Life payment with one-half continuation to one survivor beneficiary is form of payment C. The retired member is paid a reduced pension for life under form of payment C. When the retired member dies, the designated survivor

beneficiary is paid one-half the amount of the reduced pension until death. If the designated survivor beneficiary predeceases the retired member, the amount of pension shall be changed to the amount that would have been payable had the retired member elected form of payment A.

D. Life payments with temporary survivor benefits for children is form of payment D. The retired member is paid a reduced pension for life under form of payment D. When the retired member dies, each declared eligible child is paid a share of the reduced pension until death or age twenty-five years, whichever occurs first. The share is the share specified in writing and filed with the association by the retired member. If shares are not specified in writing and filed with the association, each declared eligible child is paid an equal share of the reduced pension. A redetermination of shares shall be made when the pension of any child terminates. An eligible child is a natural or adopted child of the retired member who is under age twenty-five years. A declared eligible child is an eligible child whose name has been declared in writing and filed with the association by the retired member at the time of election of form of payment D. The amount of pension shall be changed to the amount of pension that would have been payable had the retired member elected form of payment A upon there ceasing to be a declared eligible child during the lifetime of the retired member.

E. If all pension payments permanently terminate before there is paid an aggregate amount equal to the retired member's accumulated member contributions at the time of retirement, the difference between the amount of accumulated member contributions and the aggregate amount of pension paid shall be paid to the retired member's refund beneficiary. If no refund beneficiary survives the retired member, the difference shall be paid to the estate of the retired member."

SECTION 13. A new section of the Magistrate Retirement Act, Section 10-12C-13.3 NMSA 1978, is enacted to read:

"10-12C-13.3. DEATH BEFORE RETIREMENT--SURVIVOR PENSION.--For a member whose initial term in office begins on or after July 1, 2014:

A. a survivor pension may be paid to certain persons related to or designated by a member who dies before normal or disability retirement if a written application for the pension, in the form prescribed by the association, is filed with the association by the potential survivor beneficiary or beneficiaries within one year of the death of the member. Applications may be filed on behalf of the potential survivor beneficiary or beneficiaries or by a person legally authorized to represent them;

B. if there is no designated survivor beneficiary and the board finds the death to have been the natural and proximate result of causes arising solely and exclusively out

of and in the course of the member's performance of duty while in office, a survivor pension shall be payable to the eligible surviving spouse. The amount of the survivor pension shall be the greater of:

(1) the amount as calculated pursuant to the Magistrate Retirement Act and applicable to the deceased member at the time of death as though the deceased member had retired the day preceding death under form of payment B using the actual amount of service credit attributable to the deceased member at the time of death; or

(2) fifty percent of the deceased member's final average salary;

C. a survivor pension shall also be payable to eligible surviving children if there is no designated survivor beneficiary and the board finds the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty while in office. The total amount of survivor pension payable for all eligible surviving children shall be either:

(1) fifty percent of the deceased member's final average salary if an eligible surviving spouse is not paid a pension; or

(2) twenty-five percent of the deceased member's final average salary if an eligible surviving spouse

is paid a pension.

The total amount of survivor pension shall be divided equally among all eligible surviving children. If there is only one eligible child, the amount of pension shall be twenty-five percent of the deceased member's final average salary;

D. if the member had the applicable minimum number of years of service credit required for normal retirement but the board did not find the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty while in office and there is no designated survivor beneficiary, a survivor pension shall be payable to the eligible surviving spouse. The amount of the survivor pension shall be the greater of:

(1) the amount as calculated under the coverage plan applicable to the deceased member at the time of death as though the deceased member had retired the day preceding death under form of payment B using the total amount of actual service credit attributable to the deceased member at the time of death; or

(2) thirty percent of the deceased member's final average salary;

E. if the member had the applicable minimum number of years of service credit required for normal retirement but

the board did not find the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty while in office and there is no designated survivor beneficiary, and if there is no eligible surviving spouse at the time of death, a survivor pension shall be payable to and divided equally among all eligible surviving children, if any. The total amount of survivor pension payable for all eligible surviving children shall be the greater of:

(1) the amount as calculated under the coverage plan applicable to the deceased member at the time of death as though the deceased member had retired the day preceding death under form of payment B with the oldest eligible surviving child as the survivor beneficiary using the total amount of actual service credit attributable to the deceased member at the time of death; or

(2) thirty percent of the deceased member's final average salary;

F. an eligible surviving spouse is the spouse to whom the deceased member was married at the time of death. An eligible surviving child is a child under the age of eighteen years and who is an unmarried, natural or adopted child of the deceased member;

G. an eligible surviving spouse's pension shall terminate upon death. An eligible surviving child's pension

shall terminate upon death or marriage or reaching age eighteen years, whichever comes first;

H. if there is no designated survivor beneficiary and there is no eligible surviving child, the eligible surviving spouse may elect to be refunded the deceased member's accumulated member contributions instead of receiving a survivor pension;

I. a member may designate a survivor beneficiary to receive a pre-retirement survivor pension, subject to the following conditions:

(1) a written designation, in the form prescribed by the association, is filed by the member with the association;

(2) if the member is married at the time of designation, the designation shall only be made with the consent of the member's spouse, in the form prescribed by the association;

(3) if the member is married subsequent to the time of designation, any prior designations shall automatically be revoked upon the date of the marriage;

(4) if the member is divorced subsequent to the time of designation, any prior designation of the former spouse as survivor beneficiary shall automatically be revoked upon the date of divorce; and

(5) a designation of survivor beneficiary

may be changed, with the member's spouse's consent if the member is married, by the member at any time prior to the member's death;

J. if there is a designated survivor beneficiary and the board finds the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty while in office, a survivor pension shall be payable to the designated survivor beneficiary. The amount of the survivor pension shall be the greater of:

(1) the amount as calculated under the coverage plan applicable to the deceased member at the time of death as though the deceased member had retired the day preceding death under form of payment B using the actual amount of service credit attributable to the member at the time of death; or

(2) fifty percent of the deceased member's final average salary;

K. if there is a designated survivor beneficiary, if the member had the applicable minimum number of years of service credit required for normal retirement and if the board did not find the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty while in office, a survivor pension shall be payable to the designated

survivor beneficiary. The amount of the survivor pension shall be the greater of:

(1) the amount as calculated under the coverage plan applicable to the deceased member at the time of death as though the deceased member had retired the day preceding death under form of payment B using the actual amount of service credit attributable to the member at the time of death; or

(2) thirty percent of the deceased member's final average salary;

L. if all pension payments permanently terminate before there is paid an aggregate amount equal to the deceased member's accumulated member contributions at time of death, the difference between the amount of accumulated member contributions and the aggregate amount of pension paid shall be paid to the deceased member's refund beneficiary. If no refund beneficiary survives the survivor beneficiary, the difference shall be paid to the estate of the deceased member; and

M. for purposes of this section, "service credit" means only the service credit earned by a member during periods in office as a magistrate."

SECTION 14. Section 10-12C-14 NMSA 1978 (being Laws 1992, Chapter 118, Section 14) is amended to read:

"10-12C-14. COST-OF-LIVING ADJUSTMENT.--A qualified

pension recipient is eligible for a cost-of-living adjustment payable pursuant to the provisions of the Magistrate Retirement Act as follows:

A. beginning July 1, 2014 and continuing through June 30, 2016, there shall not be a cost-of-living adjustment applied to a pension payable pursuant to the Magistrate Retirement Act; and

B. beginning on May 1, 2016 and no later than each May 1 thereafter:

(1) the board shall certify to the association the actuarial funded ratio of the fund as of June 30 of the preceding calendar year;

(2) if, pursuant to Paragraph (1) of this subsection, the certified funded ratio is greater than or equal to one hundred percent, the board shall next certify the projected funded ratio of the fund on July 1 of the next succeeding calendar year if, effective July 1 of the current calendar year, a cost-of-living increase of two percent is applied to all payable pensions; and

(3) on each July 1 following the board's certification of the funded ratio, the cost-of-living adjustment, if any, applied to a pension payable pursuant to the Magistrate Retirement Act shall be determined as follows:

(a) if, pursuant to Paragraph (1) of this subsection, the funded ratio of the fund is greater than

or equal to one hundred percent, and if, pursuant to Paragraph (2) of this subsection, the projected funded ratio is greater than or equal to one hundred percent, the amount of pension payable beginning July 1 of the next fiscal year shall be increased two percent. The amount of the increase shall be determined by multiplying the amount of the pension inclusive of all prior adjustments by two percent; and

(b) if the funded ratio of the fund, as certified pursuant to Paragraph (1) or (2) of this subsection, is less than one hundred percent, the amount of pension payable shall not include a cost-of-living increase; provided, however, that, if, pursuant to the provisions of this subparagraph, the cost-of-living adjustment is suspended for the two consecutive fiscal years immediately prior to the most recent certification by the board of the funded ratio: 1) the amount of pension payable in the fiscal year immediately following the two-year suspension shall be increased two percent regardless of the certified funded ratio; and 2) thereafter, if, pursuant to the provisions of Paragraph (1) of this subsection, the certified funded ratio is less than one hundred percent, the provisions of this subsection shall apply without exception in the next succeeding fiscal year."

SECTION 15. A new section of the Magistrate Retirement Act, Section 10-12C-14.1 NMSA 1978, is enacted to read:

"10-12C-14.1. QUALIFIED PENSION RECIPIENT--COST-OF-

LIVING ADJUSTMENT WAIT PERIOD--DECLINING INCREASE.--

A. Pursuant to the Magistrate Retirement Act, a qualified pension recipient is a:

(1) normal retired member who retires:

(a) on or before June 30, 2014 and has been retired for at least two full calendar years from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted;

(b) between July 1, 2014 and June 30, 2015 and has been retired for at least three full calendar years from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted;

(c) between July 1, 2015 and June 30, 2016 and has been retired for at least four full calendar years from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted;
or

(d) on or after July 1, 2016 and has been retired for at least seven full calendar years from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted;

(2) normal retired member who is at least sixty-five years of age and has been retired for at least one full calendar year from the effective date of the latest retirement prior to July 1 of the year in which the pension is

being adjusted;

(3) disability retired member who has been retired for at least one full calendar year from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted;

(4) survivor beneficiary who has received a survivor pension for at least two full calendar years; or

(5) survivor beneficiary of a deceased retired member who otherwise would have been retired at least two full calendar years from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted.

B. A qualified pension recipient may decline an increase in a pension by giving the association written notice of the decision to decline the increase at least thirty days prior to the date the increase would take effect."

SECTION 16. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

SECTION 17. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2014. _____